It has been contended on behalf of the plaintiff that as administrator he has a right to look after and wind up the estate. That, of course, is perfectly true. He has a right to look after such part of the estate as exists. It is also contended that the plaintiff has a right to the premises occupied by the deceased until such time as a competent court makes an order for vacant possession against him. The fallacy of this argument lies in the fact that the plaintiff has never been in possession of the premises. There can be substance in his argument only if the contractual tenancy has not been determined. Had no steps been taken to terminate the contractual tenancy, he would be entitled to go into occupation by virtue of the contractual tenancy being vested in him as an administrator, but now that the contractual tenancy has come to an end and as no statutory tenancy can arise in his favour he has no right whatsoever *vis-a-vis* the tenancy of the premises.

It is true that the landlord of controlled premises is not allowed, even after termination of the contractual tenancy, to retake possession against the will of the tenant in the exercise of his common law rights, and this so whatever the method by which the contractual tenancy ended. But if there is no tenant within the meaning of the Control of Rent Ordinance, 1956, the landlord's common law right to retake possession is not restricted. The defendant cannot be expected to seek an order of court for vacant possession against a non-existent lawful or unlawful occupier.

As regards the property of the deceased lying on the premises, numerous letters were sent to the plaintiff asking him to take it away. At no time was this property withheld from him. He is therefore not entitled to an order of delivery up of the property. He is also not entitled to recover any expenses incurred in having the warrant of distress discharged before he became administrator. In any event he could recover his costs only in the distress proceedings.

For the reasons I have stated, the plaintiff's action is dismissed. As he obtained no leave of the court to bring this action, I award costs of the action against him personally.

Action dismissed.

Solicitors: *K. L. Devaser & Co.; Skrine & Co.*

PUBLIC PROSECUTOR v. YUSOFF

[A.Cr.J. (Abdul Aziz J.) May 1, 1966]

[Kota Bharu — Criminal Appeal No. 9 of 1965]

Criminal Law and Procedure — Trial — Nullity — Finding of — Meaning of — Proper order.

A finding that the trial is a nullity means that the whole proceedings of the court is void or that there is no trial. In such a case the proper order that should have been made by the magistrate was a discharge.

CRIMINAL APPEAL.

Azmi bin Dato' Kamaruddin (Deputy Public Prosecutor) for the appellant.

Respondent in person.

Abdul Aziz J. (delivering oral judgment): In this case the respondent was charged under section 186 of the Penal Code for voluntarily obstructing a public servant, to wit, WPC. 221 in the discharge of her public function. The facts were briefly: on the day in question when WPC. 221 was on duty she saw the respondent carrying a pillion rider. She tried to stop the respondent but he refused to do so but proceeded on to a school. WPC. 221 followed him to the school and caught hold of his bicycle but the respondent pulled the bicycle away from her and the scuffle, it was alleged, amounted to obstruction of duty.

At the close of the case for the prosecution the learned magistrate acquitted and discharged the respondent on the ground that the trial was a nullity by reason of the absence of the sanction as required under section 129 of the Criminal Procedure Code (Cap. 6). Having made such finding the learned magistrate acquitted and discharged the respondent.

To my mind, the learned magistrate has misunderstood the effect of a finding of nullity. A finding that the trial is a nullity means that the whole proceedings of the court is void or that there is no trial. In such a case the proper order that should have been made by the magistrate was a discharge.

I, therefore, substitute a finding of discharge for a finding of acquittal and discharge by the magistrate and this is without prejudice, of course, to any other action that the deputy public prosecutor may wish to take in the pursuit of this charge.

Order accordingly.

MOHAMED NOOR v. PUBLIC PROSECUTOR

[A.Cr.J. (Abdul Aziz J.) May 1, 1966]

[Kota Bharu — Criminal Appeal No. 7 of 1966]

Criminal Law and Procedure — Sentence — Crimes of violence — Prevalence of — Particular circumstances.

Penal Code, s. 324 — Voluntarily causing hurt with kris.

The appellant was convicted on a charge under section 324 of the Penal Code for voluntarily causing hurt with an instrument for cutting, to wit, a kris. He was sentenced to two years imprisonment. On appeal against the sentence;

Held: having regard to the particular circumstances